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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/340,771	06/28/1999	DAVID LEWIS MYERS	13944	4334

7590 03/14/2003

DOUGLAS H TULLEY JR
KIMBERLY-CLARK WORLDWIDE INC
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER

PRATT, CHRISTOPHER C

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/14/2003

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/340,771

Applicant(s)

MYERS, DAVID LEWIS

Examiner

Christopher C Pratt

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 3/4/03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
 2. ☐ The proposed amendment(s) will not be entered because:
 (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ they raise the issue of new matter (see Note below);
 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-26.

Claim(s) withdrawn from consideration: _____.

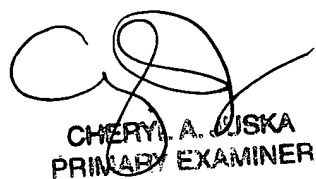
8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
 10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues that the rejection is confusing and that the examiner has changed the original position. Applicant finds the examiner's original statement of obviousness, wherein the examiner stated that "it would have been obvious...to add the functional end groups of Bates to the polymer composition of Rousseau," to be unclear. Applicant provides three interpretations of this position. All three are virtually equivalent, however, for the purposes of clarification the obviousness statement will be restated. Rousseau teaches a polymer composition comprising polyolefins. Bates teaches a polymer composition comprising a polyolefin, which has been modified with a telomer. The telomer is added as a miscible functional end group. It would have been obvious to modify the polyolefins of Rousseau with the telomer taught by Bates. Motivation for the combination comes directly from Bates' teaching that it is desirable to "functionalize" polyolefins in order to "confer further utility on the polyolefin (col. 22, lines 37-40)." Bates further teaches that preparation of such polymers is known in the art (col. 22, lines 49-53). The examiner notes that applicant did not argue that the examiner's position was confusing or unclear before the rejection was made final.

Applicant believes that a statement in the final rejection changed this position. The statement was: "It is the examiner's position that the person having ordinary skill in the art would have added Bates' telomer to the composition of Rousseau with the reasonable expectation of forming a miscible blend." This statement was made in response to applicant's argument that the combination proposed by the examiner would not have been miscible. The statement has nothing to do with the "obviousness" of combining two references or the motivations associated therewith. It simply summarized Bates, wherein Bates is concerned with the creation of miscible polymer blends, therefore, the skilled artisan would have a reasonable expectation of success in achieving a miscible blend when the telomer is added to the composition of Rousseau. Put another way, Bates' teachings suggest that the combination can be successfully made and the final product will be miscible. The examiner's position has been consistent and remains unchanged.

Applicant argues that it would not have been obvious to make the proposed combination because Bates' telomer would result in increased polarity and reduce the ability of Rousseau's electret to hold a charge. Applicant argues that Bates teaches increased polarity with the addition of a telomer. The examiner does not agree with this interpretation of Bates. Bates teaches many different types of telomers. One of these types happens to include a polar polymer, but the rest are not polar. For example, col. 23, lines 1-2 state that "in one particular embodiment where there is a segment of polar polymer." Bates further teaches that polarity can be added alternatively with hydrophilicity and other properties (col. 23, line 59). Therefore, Bates teaches embodiments wherein some telomers provide polarity and others do not. Applicant's submitted journal article is irrelevant to the instant rejection.

Applicant again argues that it is not clear that the combination set forth by the examiner would be miscible. Applicant appears to argue that the additional nitrogen atom of Rousseau destroys the miscibility of the proposed combination. Applicant provides no support or evidence for this argument..


CHERYL A. JISKA
PRIMARY EXAMINER